IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE C.V.RAMULU

WRIT PETITION NO. 10926 of 2003

Between:

1 S. Raja Sekhar Reddy S/o. S. Subba Reddy
R/o. 37/82-A, S.N. Colony,
Rayachoti, Kadapa District
2 S. Rajendra Prasad, S/o. Sriramulu
R/o. D.No.51/35-1, Kothapeta,
Rayachoti, Kadapa District
3 V.Madana Mohan Reddy, S/o. V. Sahadeva Reddy
R/o. Motakatla, Sambepalle Mandal,
Rayachoti, Kadapa District
4 S. Peeran, S/o.S. Mahaboob Saheb
R/o. Bethel Colony, Rayachoti,
Kadapa District
5 K. Deva Rayalu, S/o. Nagaiah
R/o. Kothapeta, Rayachoti,
Kadapa District
6 S.A. Jaya Ramaiah, S/o. Ramaiah
R/o. Kothapeta, Rayachoti,
Kadapa District

.... PETITIONERS

AND

1 The District Collector, Kadapa / Chief-Person-in-Charge,
Rayachoti Rural Electricity Supply Cooperative Society, Rayachoti

2. Rayachoti Rural Electricity Supply Cooperative Society, Rayachoti.

3. Managing Director, Rayachoti Rural Electricity Supply Cooperative Society, Rayachoti.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction declaring

the action of the respondents in not paying the salaries to the petitioners as per their fixation of pay scale in 3rd respondent's proceedings No.Rc.No.1368/2002/ADM/D.No.348/2003 dated 25-04-2003 as illegal, arbitrary and unjust and consequently direct the 3rd respondent to pay the salaries in accordance with his proceedings dated 25-04-2003.

Counsel for the Petitioners: Mr.C.V.NAGARJUNA REDDY

Counsel for the Respondent Nos. 1 to 3 : Mr.C.V. Mohan Reddy

The Court made the following:

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in not paying the salaries to the petitioners in accordance with their fixation of pay scale in 3rd respondent's Proceedings No.Rc.No.1368/2002/ADM/D.No.348/2003, dated 25.4.2003 as arbitrary and illegal and consequently to direct the 3rd respondent to pay the salaries to the petitioners in accordance with the said Proceedings.

While admitting the writ petition, this Court in W.P.M.P.No.13664 of 2003, dated 16-6-2003 passed an order as under:

> "Prima facie, it is evident that the 3rd respondent had issued Proceedings dated 25-4-2003 placing the petitioners in the scale of pay of Rs.6950-10800 in the post of Additional Assistant Engineer. As long as the said proceedings stand, the petitioners cannot be denied the benefit of the same.
>
> Therefore, there shall be interim direction to the respondents to pay the salaries to the petitioners in accordance with the pay scales as stipulated in the Proceedings dated 25-4-2003, as long as the said proceedings stand."

Now, W.V.M.P.No.2260 of 2003 is filed along with a counter affidavit seeking vacation of above interim order. At this stage, both the learned counsel have agreed that the writ petition itself can be disposed of. Therefore, the writ petition itself is being disposed of.

It is the case of the petitioners that they are all Diploma holders in Electrical Engineering and were appointed as casual labour on a consolidated pay at the rate of Rs.20/- per day in the 1st respondent- organization in the year 1991 and thereafter

they were promoted as Linemen in the year 1992 and further promoted as Load Surveyors in the year 1994. As they were subsequently reverted to the post of Lineman, they filed a writ petition before this Court and obtained stay of reversion. Thereafter, they were promoted to the post of Additional Assistant Engineer. However, when their pay scales were not fixed properly, they made a representation and the 3rd respondent-Managing Director considered their request by issuing proceedings dated 25.4.2003. In the said order, it was stated that though the petitioners have been promoted as Additional Assistant Engineers with effect from 22.4.1998, the monetary benefits will accrue only with effect from 1.1.2000. Subsequently, the benefits granted under the proceedings dated 25.4.2003 have been withheld by the respondents without any written order and without giving any notice or calling for any explanation from the petitioners. Therefore, the present writ petition.

A detailed counter-affidavit has been filed by the 3rd respondent denying the allegations made by the petitioners. It is stated that the promotions were made without obtaining approval of staffing pattern and also prior permission of the Registrar of Cooperative Societies as required under Section 116(c) of the A.P. Cooperative Societies Act,1964 (for short 'the Act'). Therefore, the very promotions made were irregular and contrary to the statutory provisions. In the year 1994, large scale promotions were effected without the posts being sanctioned and without there being approval from the competent authority affecting the financial position of the 2nd respondent-society. Therefore, these things were brought to the notice of the Commissioner for Cooperation and Registrar of Cooperative Societies, who, on considering the irregularities in promotions as well as financial position observed that it is not desirable to effect such large scale promotions and incentive increments affecting its financial position. Therefore, the benefits extended by Proceedings dated 25-4-2003 were withheld.

Learned counsel for the respondents strenuously contended that the petitioners by suppressing various litigations before this Court and the material facts, have made a representation making the Managing Director of the respondent society to pass the Proceedings dated 25-4-2003 fixing the pay scales of the petitioners. Such order was obtained by collusion and fraud. The promotions were made without obtaining approval of the staffing pattern and also prior permission from the Registrar as required under Section 116 © of the Act. As per the

proceedings issued by the Commissioner for Cooperation and Registrar of Cooperative Societies under Section 4 (2) of the A.P. Co-operative Societies Act, the then Managing Director issued proceedings dated 6.2.1995 reverting all the promotees including the petitioners to their original posts and restoring earlier pay scales, in view of their illegal promotions. It is further contended that the promotions are patently illegal and the petitioners cannot claim any benefits from the said promotions and there is no legitimate right to the petitioners to approach this Court. When the petitioners have no right to claim the enhanced salaries, the question of giving an opportunity to them before withholding the alleged benefits does not arise.

Though the learned counsel for the respondents strenuously contended that the orders of promotions as well as fixation of pay scales were obtained by fraud and collusion, nothing, which is directly attributable to the petitioners, was brought to the notice of this Court. The promotions and the fixation of pay scales of the petitioners were recommended by the Managing Director of the 2nd respondent society (3rd respondent) and the same were duly approved by the 1st respondent-District Collector-Chief Person-incharge. Therefore, the element of fraud was not made out, which is attributable to the petitioners herein.

Competency of recommendation by the 3rd respondent and approval by the 1st respondent is not in dispute, except saying that the staffing pattern as required under Section 116© of the Act was not undertaken. Therefore, the promotion and fixation of pay scales was bad.

Be that as it may, once the benefits were granted to the petitioners by proceedings dated 25.4.2003, the respondents could not have withdrawn orally. It would have been fair on the part of the respondents to issue a notice to the petitioners and after seeking proper explanation ought to have passed appropriate orders. Such a course of action was not adopted in this case. Thus, the action of the respondents in withholding the benefits, which were granted to them is in gross violation of principles of natural justice and is liable to be declared as arbitrary and illegal. Therefore, the action of the respondents in withholding the benefits granted under Proceedings dated 25-4-2003 to the petitioners is arbitrary and illegal.

For the aforesaid reasons, the writ petition is allowed as prayed for. This order, however, will not preclude the respondents from taking any action

withdrawing the benefits etc., by issuing appropriate notice so as to satisfy the principles of natural justice. No costs.

24.11.2004

Gsn/prk

Note: Office to issue C.C. today itself

(B.O.)

prk

That Rule nisi has been made absolute as above.

Witnessess Hon'ble Sri Devinder Gupta, The Chief Justice, on this Wednesday the Twenty Fourth Day of November, Two Thousand and Four.

To

1 The District Collector, Kadapa / Chief-Person-in-Charge,
Rayachoti Rural Electricity Supply Cooperative Society, Rayachoti.
2 The Managing Director, Rayachoti Rural Electricity Supply Cooperative

Society,Rayachoti, Kadapa District.

3 Two C.D. copies